



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 21, 1995

Ms. Alesia L. Sanchez
Legal Assistant
Legal and Compliance, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-188

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30222.

The Texas Department of Insurance (the "department") received a request for copies of "any and all complaints against [Mark Chandler or the Mark Chandler Insurance Agency] by Barry Boorstein or those associated with him." The department seeks to withhold the requested information from compelled public disclosure based on sections 552.101 and 552.103 of the Government Code.

Section 552.101 excepts from disclosure information that is confidential by law, including information that is deemed confidential by statutory law. You raise section 552.101 in conjunction with section 9 of article 1.15 of the Insurance Code, which provides in part as follows:

A final or preliminary examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under the open records law, . . . This section applies if the carrier examined is under supervision or conservation but does not apply to an examination conducted in connection with a liquidation or a receivership under this code or another insurance law of this state.

This provision makes confidential a final or preliminary examination report and any information obtained during the course of an examination, but only if the insurance carrier that was examined is under supervision or conservation. You have not provided information that would establish whether the carrier at issue is under supervision or conservation. Thus, we cannot conclude that any of the information at issue is made confidential by section 9 or article 1.15 of the Insurance Code.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld pursuant to section 552.103 of the Government Code.

We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349, 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

However, even after the litigation is concluded, the department must not release information that is made confidential by law. We note that some of the information is addressed to an individual who works in the department's fraud unit. Such information may be confidential under section 552.101 of the Government Code in conjunction with section 5(a) of article 1.10D of the Insurance Code. *See* Open Records Decision No. 608 (1992). We lack the necessary information to determine whether this provision is applicable to the information at issue.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", written in a cursive style.

Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 30222

Enclosures: Submitted documents

cc: Mr. Mark Chandler
Agent and Owner
Mark Chandler Insurance Agency
Auchan Hypermarket
8800 Sam Houston Parkway
Houston, Texas 77099
(w/o enclosures)